



Office of the Attorney General
State of Texas

March 12, 1993

DAN MORALES

ATTORNEY GENERAL

Mr. Tim Curry
Criminal District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR93-107

Dear Mr. Curry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18747.

The Tarrant County District Attorney received an open records request for a tape recording of conversations between a certain Fort Worth police officer and "911 call-takers and/or police dispatchers concerning a hit-and-run accident and [the officer's] subsequent pursuit, calls from individuals to 911 concerning the incident and conversations between Fort Worth police officers and dispatchers regarding the [subsequent shooting of an individual]." You contend, *inter alia*, that because the district attorney's office gathered the requested tape recording pursuant to a grand jury subpoena, the recording is in the constructive possession of the Tarrant County Grand Jury and thus is not subject to the Open Records Act.

Section 2(1)(H) of the Open Records Act specifically excludes the judiciary, of which the grand jury is a part; from the provisions of the act. When the district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984). You have submitted to this office an affidavit stating that your office obtained the tape recording pursuant to a subpoena issued on behalf of the grand jury. Assuming that your office did not possess a copy of the recording prior to the issuance of the subpoena, *see* Open Records Decision No. 513 (1988)¹, we conclude that

¹In Open Records Decision No. 513 (1988), this office held that information may not be withheld as information in the constructive possession of the grand jury merely because the information had been submitted to the grand jury pursuant to a subpoena: for a governmental body, as defined in section 2(1) of the act, to withhold such information, the governmental body must have either gathered or created the information at the behest of the grand jury. For example, the Fort Worth Police Department could not

the recording held by your office is in the constructive possession of the Fort Worth Grand Jury and thus is not subject to the Open Records Act. Accordingly, you need not comply with the open records request.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-107.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/RWP/lmm

Ref.: ID# 18747

cc: Ms. Kathy Sanders
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Fort Worth Star-Telegram
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(footnote cont'd.)

now claim that the recording is not subject to the Open Records Act merely because the department had released a copy of the recording pursuant to the subpoena.